IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELALTE SIDE

WRIT PETITION NO.2762 OF 2001

Mr.Nitin R. Tambde & Ors. ...Petitioners.
Vs.
Mr. Vijay K. Ishwad since deceased
through his Lrs. : Shilpa @ Asha
Vijay Ishwad and Ors. ...Respondents.

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Mr. N.R. Bubna for the Petitioners.
Mr. R. S. Datar for Respondent Nos.1(a) to 1(e), 2, 3, 5 to 11.
Respondent Nos.4(a) to 4(c) served.

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CORAM : DR.D.Y.CHANDRACHUD, J.

June 10, 2005.

P.C.:

The Additional District Judge has set aside the findings of the Trial Court and has decreed the suit on the ground that the tenant had acquired suitable alternate residential accommodation within the meaning of Section 13(1)(k) of the Bombay Rents, Hotel and Lodging Rates (Control) Act, 1947. The evidence on the record shows that the alternate premises were initially allotted by a Temple Trust to the mother of the Petitioner. After her death, the First Petitioner has continued to look after the work of the temple and is in occupation of the alternate accommodation. The

Second Petitioner has left the premises and is employed at Nasik. The Third and Fourth Petitioners who are married sisters, are residing in their matrimonial homes. In fact, the finding of fact which has been recorded by the Appellate Court is that nobody is residing in the suit premises and that the First Petitioner continues to reside in the alternate premises that have been alloted to him by the Temple Trust. In view of the fact that alternate accommodation has been acquired, the burden was on the Petitioners to establish that the aforesaid premises were not suitable. Having heard Counsel and on the aforesaid finding, I am of the view that the decree for eviction does not warrant any interference. Most important, the interference of the Court under Article 227 of the Constitution is not warranted on the finding of the Appellate Court that the suit premises are not even in the occupation of the Petitioners any more. The Petition, in the circumstances, is dismissed. However, having regard to the circumstances of the case, time to vacate the premises is granted to the Petitioners until 30th September 2005 subject to the filing of the usual undertaking within a period of four weeks from today.

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